In the High Court of Judicature at Madras

Dated: 5.11.2007

Coram:

The Honourable Mr.Justice K.Chandru

W.P.No.28877 of 2007
& M.P.Nos.1 & 2 of 2007

All India Defence HVF Dr.Ambedkar
National Employees Union,
(Regn. No.173/TVR),
Rep. by its General Secretary,
R.Ragavan,
4, Dhanalakshmi Nagar,
Avadi, Chennai-600 054. .. Petitioner

vs.

1. Director/I.R.,
Ordnance Factory Board,
10-A, S.K.Bose Road,
Kolkata-700 001.
West Bengal.

2. The Senior General Manager,
Heavy Vehicles Factory,
Avadi, Chennai-600 054.

3. The Joint General Manager/Admin,
Heavy Vehicles Factory,
Avadi, Chennai-600 054.

4. The Deputy Labour Welfare Commissioner (C),
Heavy Vehicles Factory,
Avadi, Chennai-600 054. .. Respondents

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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent herein in his proceedings No.264, dated 20.8.2007, quash the same and to direct the respondents herein to hold the election afresh for the verification of members of unions for affording recognition status as followed in the year 2005 election in accordance with the direction of the first respondent herein in his letter No.12/12/Veri/2005/A/IR, dated 12.8.2005.

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For petitioner : Mr.G.Purushothaman
For respondents : Mr.P.Wilson, Asst. Solicitor General of India

Order

The petitioner is a registered Trade Union functioning in the second respondent-Heavy Vehicles Factory, Avadi, Chennai. With reference to identifying a bargaining agent, respondents 1 to 3 have evolved a procedure for Election and symbols were allotted to all the five Unions functioning in the said establishment and workers were directed to put the tick mark against the Union which they belong to. The model symbols, as seen from page 38 of the typed set of papers filed along with the Writ Petition, show that the individual has to put a tick mark against the respective Union, with a view to verify the dual/multiple Union membership proforma.

2. Learned counsel appearing for the petitioner-Union submits that there is no secrecy in marking the preferential Union and because of the dual membership, if any worker marks a preference for some other Union, the officers of the Heavy Vehicles Factory will hand over or not pass on such information and this will lead to further victimisation. Therefore, according to the petitioner-Union, there must be a total 'secret ballot' without disclosing the name and token number of the workmen.

3. The prayer in the Writ Petition is for quashing the proceedings dated 20.8.2007 issued by the third respondent-Joint General Manager/Admin, Heavy Vehicles Factory, Avadi, Chennai. Learned counsel for the petitioner-Union says that the procedure followed in the previous years, should be followed and the 'ballot papers' should not contain the names of the workers and they should not be asked to sign on the ballot papers.

4. First of all, it must be noted that grant of recognition to a registered Trade Union is not based upon any law made either by the State Legislature or by the Parliament, unlike the States of Maharashtra and Gujarat, which enjoy a special Legislation in this regard. The procedure followed by the respondents is evolved on a consensus basis and covered by certain circulars issued by the Central Government from time to time. The entire issue relating to the recognition of the majority Unions conferred by the employer, is beyond the purview of the judicial review, as the issue is non-justiciable.

5. Learned counsel for the petitioner-Union submits that the long arm of the Court can always extend, as the persons involved are all poor workers and therefore, the Court can grant the necessary relief.

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6. Learned counsel also brought to the notice of this Court the judgment of the Supreme Court reported in AIR 1995 Supreme Court 1344 (F.C.I. Staff Union vs. Food Corporation of India). In that judgment, the Supreme Court merely observed that the "check-off system" which once prevailed in the recognition area, has lost in appeal and the real leadership can be found out only through "secret ballot". The said judgment of the Supreme Court does not lay down any law which is binding upon the Subordinate Courts, and it merely went by the consensus between the parties as per the Memorandum of Understanding evolved by the Food Corporation of India. No useful reference can be made to the said judgment.

7. It leaves out the last question about the 'secrecy clause' in respect of any registered Trade Union. The Unions are bound to file Annual Returns as per the Regulations framed under the Trade Unions Act, 1926 and Form-E relates to the membership of the Union which has to be disclosed to the Registrar of Trade Unions, which is a public document. Therefore, there is nothing like 'secret' about the loyalty of any particular worker. If fear is the criteria for bringing the 'secret ballot', then no amount of Legislation or Court support can save the working class from expressing their preference without fear or any hindrance in their choice.

8. Under the circumstances, the Writ Petition is misconceived and the same stands dismissed. No costs. The Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cs

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1 cc to Mr.G. Purushothaman, Advocate, SR. 66429
1 cc to Mr. P. Wilson, Advocate, Sr. 66613

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